

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RIVER LIGHT V, L.P. and TORY BURCH
LLC,

Plaintiffs,

-v-

LIN & J INTERNATIONAL, INC., YOUNGRAN
KIM, LJ BRAND, INC., and NJ LIN & J
INTERNATIONAL, INC.,

Defendants.
----- X

13cv3669 (DLC)

ORDER

COMMENT

TRONICALLY

11/12/2014

DENISE COTE, District Judge:

For the reasons stated on the record at the November 4 and 5, 2014 hearings in this action, the Court has found that defendants spoliated and fabricated evidence in this litigation and that defendants' counsel Howard Myerowitz made a series of misrepresentations to the Court concerning the date defendants' papers in opposition to plaintiffs' motion for partial summary judgment (the "Opposition Papers") were served. Those papers were not timely served.

On November 5, the Court permitted defendants to submit a markup of the Opposition Papers "indicating [passages] that [defendants] think survive and any supporting exhibits that [they] think survive" should the Court find, as it did, that "none of the documents that have been produced by the defendants in discovery can be relied upon," among other things.

On November 6, defendants submitted a markup of the Opposition Papers that continues to rely on tainted evidence. Three examples suffice.


First, one of defendants' chief arguments in the surviving pages is that defendant Kim independently created the so-called "Isis Cross" mark based on a predecessor mark allegedly sold by Belco, another company founded by Kim, since 2003. Defendants proffer in support invoices purportedly created by Belco in 2003 -- invoices defendants produced in this litigation -- despite the Court's instruction that the Opposition Papers should not rely on documents produced by defendants.

Second, defendants continue to rely on tainted invoices to argue that "Isis Cross" products were sold in 2008 and 2009. Defendants argue that, even if defendants' own copies of these invoices were spoliated, other copies are reliable because -- defendants claim -- they were produced by a third-party client.

Third, defendants continue to rely on action by the U.S. Patent and Trademark Office in response to a fraudulent submission by Kim. Accordingly, it is hereby

ORDERED that defendants' Opposition Papers are stricken.

Dated: New York, New York
November 12, 2014



DENISE COTE
United States District Judge